

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matters of)	
)	
Applications of AT&T Inc. and	)	WT Docket No. 11-65
Deutsche Telekom AG for Consent to	)	DA 11-799
Assign or Transfer Control of Licenses	)	ULS File No. 0004669383
and Authorizations)	
)	
Application for Assignment of Lower 700 MHz	)	WT Docket No. 11-18
Band Licenses from Qualcomm Incorporated	)	DA 11-252
to AT&T Mobility Spectrum LLC	)	ULS File No. 0004566825
)	
Applications for Assignment of Licenses from	)	ULS File Nos. 0004544863
Whidbey Telephone Company to AT&T	)	and 0004544869
Mobility Spectrum LLC)	
)	
Application for Assignment of License from	)	ULS File No. 0004621016
700 MHz, LLC to AT&T Mobility Spectrum)	
LLC)	
)	
Application for Assignment of License from	)	ULS File No. 0004635440
Knology of Kansas, Inc. to AT&T Mobility)	
Spectrum LLC)	
)	
Application for Transfer of Control of	)	ULS File No. 0004643747
Redwood Wireless Corp. to AT&T Inc.)	
)	
Application for Assignment of License from	)	ULS File No. 0004681773
Windstream Lakedale, Inc. to AT&T)	
Mobility Spectrum LLC)	
)	
Application for Assignment of Licenses from	)	ULS File No. 0004681771
Windstream Iowa Communications, Inc. to)	
AT&T Mobility Spectrum LLC)	
)	
Application for Assignment of License from	)	ULS File No. 0004699707
Maxima International, LLC to AT&T)	
Mobility Spectrum LLC)	
)	
Application for Assignment of Licenses from	)	ULS File No. 0004448347
D&E Investments, Inc. to New Cingular)	
Wireless PCS, LLC)	

JOINT MOTION TO CONSOLIDATE

In recent months, AT&T, Inc. (“AT&T”) has launched a campaign to acquire radio licenses. The two most visible operations in this campaign – AT&T’s application to acquire 700 MHz licenses from Qualcomm, Inc. (“Qualcomm”), and its separate application to acquire spectrum from T-Mobile USA, Inc. (“T-Mobile”) – are closely related to each other. For example, the two proposed transactions share a common transferee/assignee, involve a number of overlapping markets, allow AT&T to exceed the FCC’s spectrum screen in certain markets, and are relevant to AT&T’s claims regarding its alleged network capacity constraints and its continuing aggregation of broadband-suitable spectrum.¹ Because of these shared issues and their impact on the public interest, Cincinnati Bell Wireless, LLC, MetroPCS Communications, Inc., NTELOS, the Rural Cellular Association, the Rural Telecommunications Group, and Sprint Nextel Corporation (“Joint Parties”) recently asked the Commission to consolidate its review of the AT&T/Qualcomm and AT&T/T-Mobile application proceedings.²

However, AT&T’s efforts to acquire spectrum does not end with these proposed transactions. AT&T also is engaged in a series of smaller transactions to acquire paired 700 MHz spectrum throughout the United States. The Joint Parties therefore expand the requested consolidation to encompass a series of 44 other proposed license assignments and transfers under which AT&T would acquire even more 700 MHz spectrum than it is seeking from Qualcomm (the “Serial 700 MHz Transactions” or “Serial 700 MHz Applications”). While these proposed

¹ See Cincinnati Bell Wireless, LLC, MetroPCS Communications, Inc., NTELOS, the Rural Cellular Association, the Rural Telecommunications Group, and Sprint Nextel Corporation, Joint Reply to Oppositions, WT Docket Nos. 11-65 & 11-18, at 7-9 (May 16, 2011) (“Joint Reply to Oppositions”).

² Joint Motion to Consolidate, WT Docket Nos. 11-65 & 11-18 (Apr. 27, 2011) (“Joint Motion to Consolidate”).

transactions have not gained much publicity, it has become apparent that they also are part of AT&T's overall campaign to amass nationwide swathes of spectrum, including "beachfront" 700 MHz licenses. Reviewing these transactions in an uncoordinated, serial manner could mask their collective impact on the public interest as well as their close relationship to the Qualcomm and T-Mobile applications. For example, approving the Serial 700 MHz Applications would deplete the broadband-suitable spectrum available for existing and would-be competitors of AT&T, thereby exacerbating the already substantial harm to competition and consumers that would be caused by grant of the T-Mobile and Qualcomm applications. The Commission therefore should incorporate into its consolidated review of the T-Mobile and Qualcomm proceedings an assessment of the proposed Serial 700 MHz Transactions.

I. BACKGROUND

On January 13, 2011, AT&T and Qualcomm submitted an application seeking the Commission's approval for the assignment of Qualcomm's Lower 700 MHz D and E Block licenses to AT&T. On March 11, 2011, numerous parties filed petitions to deny that application. On April 21, 2011, AT&T and Deutsche Telekom AG submitted an application seeking FCC approval for the transfer of control of T-Mobile's licenses and authorizations to AT&T.³ Petitions to deny that application were filed on May 31, 2011.⁴

³ The proposed \$39 billion acquisition of T-Mobile, the nation's fourth largest commercial wireless provider, has already generated widespread concern from members of Congress, consumer groups, and other parties. *See, e.g.,* Cecilia Kang, *AT&T, T-Mobile Encounter Static over Merger Plans*, WASHINGTON POST, May 27, 2011, at A17 (describing concerns by members of Congress, consumer groups, academics, and industry).

⁴ A number of the petitioning parties raised grounds to deny AT&T's proposed acquisition of T-Mobile, including concerns regarding AT&T's extraordinary aggregation of 700 MHz and similar spectrum. *See, e.g.,* Petition to Deny of DISH Network L.L.C., WT Docket No. 11-65, at 7-8 (May 31, 2011); Petition to Deny of Free Press, WT Docket No. 11-65, at 51-52 (May 31, 2011); Petition to Deny of Rural Cellular Association, WT Docket No. 11-65, at 11-14 (May 31, 2011).

On April 27, 2011, the Joint Parties filed a Motion to Consolidate the Commission's review of the AT&T/T-Mobile application and the AT&T/Qualcomm application.⁵ Subsequently, the Applicants in those proceedings filed Oppositions to the Motion to Consolidate;⁶ the Joint Parties filed a Joint Reply to the Oppositions;⁷ and, most recently, two of the Applicants filed a Response to the Joint Reply.⁸ The Commission has not ruled on the Motion to Consolidate.

On May 19, 2011 (one day before Applicants' recent Response), the Commission released two public notices, establishing a pleading cycle for (i) the assignment of a lower 700 MHz band B-block license from Knology of Kansas, Inc. to AT&T; and (ii) the assignment of a lower 700 MHz band C-block license from 700 MHz, LLC to AT&T.⁹ On May 24, 2011, the Commission released another public notice, establishing a pleading cycle for the assignment of 22 Lower 700 MHz B and C Block licenses from Redwood Wireless Corp. ("Redwood") to AT&T.¹⁰ AT&T also has filed at least six other applications in which it seeks to acquire 700

⁵ Joint Motion to Consolidate.

⁶ Joint Opposition of AT&T Mobility Spectrum LLC and Qualcomm Incorporated to Joint Motion to Consolidate, WT Docket Nos. 11-65 & 11-18 (May 4, 2011) ("AT&T/Qualcomm Opposition"); Opposition of Deutsche Telekom to Requests to Consolidate Proceedings, WT Docket Nos. 11-65 & 11-18 (May 4, 2011) ("Deutsche Telekom Opposition").

⁷ Joint Reply to Oppositions.

⁸ *Ex parte* letter of AT&T and Qualcomm, WT Docket Nos. 11-65 & 11-18 (May 20, 2011) ("AT&T/Qualcomm Response").

⁹ FCC, Public Notice, *AT&T Mobility Spectrum LLC and Knology of Kansas, Inc. Seek FCC Consent to the Assignment of One Lower 700 MHz Band B Block License*, DA 11-922 (rel. May 19, 2011); FCC, Public Notice, *AT&T Mobility Spectrum LLC and 700 MHz, LLC Seek FCC Consent to the Assignment of One Lower 700 MHz Band C Block License*, DA 11-921 (rel. May 19, 2011). AT&T Mobility Spectrum LLC is a wholly-owned subsidiary of AT&T.

¹⁰ FCC, Public Notice, *Shareholders of Redwood 700, Inc. and AT&T Inc. Seek FCC Consent to the Transfer of Control of Lower 700 MHz Band B and C Block Licenses Held by Redwood Wireless Corp.*, DA 11-943 (rel. May 24, 2011).

MHz spectrum in various markets.¹¹ As explained below, the FCC should conduct a single, consolidated proceeding that includes review of the AT&T/T-Mobile and AT&T/Qualcomm applications along with the Serial 700 MHz Applications.

II. THE COMMISSION SHOULD ASSESS AT&T'S SERIAL 700 MHz APPLICATIONS AS PART OF ITS CONSOLIDATED REVIEW OF AN AT&T/QUALCOMM/T-MOBILE PROCEEDING

Approval of the Qualcomm transaction would enable AT&T to acquire Qualcomm's six Lower 700 MHz D Block (6 MHz) licenses, which collectively have a nationwide footprint, and five Lower 700 MHz E Block (6 MHz) licenses in five large markets. If approved, the Serial 700 MHz Applications submitted by AT&T would give the company a far greater presence in the 700 MHz band. For example, the proposed acquisitions from Knology and 700 MHz, LLC would give AT&T an additional 12 megahertz of 700 MHz spectrum in two markets, and the proposed acquisitions from Redwood would give it an additional 12 megahertz of 700 MHz spectrum in twelve markets and an additional 24 megahertz of 700 MHz spectrum in five other markets. In fact, if all of the Serial 700 MHz Applications were approved, AT&T would acquire *a total of 44 licenses in the 700 MHz Band, each comprising 12 MHz of additional beachfront spectrum.*

The vast concentration of 700 MHz spectrum contemplated by the Serial 700 MHz Applications is noteworthy not only in its own right, but also because it is closely related to the AT&T/Qualcomm and AT&T/T-Mobile proceedings. For example, approval of the Serial 700 MHz Applications would increase AT&T's overall spectrum aggregation far beyond what is

¹¹ See attached chart, summarizing a total of 55 proposed 700 MHz license assignments and transfers to AT&T (44 if one excludes the Qualcomm licenses).

already contemplated in the T-Mobile and Qualcomm applications.¹² The Commission therefore should consider all of the proposed transactions in a single consolidated proceeding.

The Joint Parties have shown that the Commission has ample statutory authority to consolidate its review of transfer-of-control or assignment applications when doing so would “conduce to the proper dispatch of business and to the ends of justice,”¹³ and that the Commission has previously exercised this authority.¹⁴ In response, Applicants have not disputed the Commission’s authority to consolidate, but have merely insisted that the precedents cited by the Joint Applicants are “distinguishable.”¹⁵

The instant proceedings, however, would allow AT&T, through serial applications, to amass 700 MHz spectrum in particular and, more generally, to become the largest wireless carrier in the nation, with a commanding presence in the 700 MHz band. This prospect raises novel concerns regarding competition, consumer welfare, and the public interest, and the FCC should not blindly follow Applicants’ narrow interpretation of allegedly inapposite precedents. Instead, the Commission should consolidate its review of all relevant transactions, including the proposed T-Mobile transaction, the proposed Qualcomm transaction, and the Serial 700 MHz Applications.

¹² AT&T already has enormous holdings in the beachfront spectrum below 1 GHz, including in the 700 MHz band. Even before AT&T’s proposed acquisition of Qualcomm’s licenses, AT&T and Verizon together control *92 percent* of the paired 700 MHz spectrum suitable for commercial mobile broadband use in the top 54 most populous U.S. markets, and *100 percent* of the paired 700 MHz spectrum suitable for commercial mobile broadband use in the top 10 markets. *See* Sprint Petition to Deny, WT Docket No. 11-65, at 66 (May 31, 2011). The acquisition of Qualcomm’s 700 MHz spectrum as well as the Serial 700 licenses would increase AT&T’s 700 MHz spectrum holdings even more.

¹³ 47 U.S.C. § 154(j); *see also* Joint Reply to Oppositions at 2-3.

¹⁴ Joint Reply to Oppositions at 3 & n.4.

¹⁵ AT&T/Qualcomm Response at 1.

III. CONCLUSION

For the foregoing reasons, the Commission should include its assessment of the Serial 700 MHz Applications filed by AT&T in its consolidated review of the AT&T/Qualcomm and AT&T/T-Mobile proceedings. Doing so will allow the Commission to assess the proposed transactions in an efficient manner that takes notice of their combined impact on the public interest, convenience, and necessity.

Respectfully submitted,

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June 9, 2011

PENDING AT&T 700 MHz LICENSE ACQUISITIONS

(through assignments or transfers of control)

File Number	Blocks (Lower 700)	Number of Licenses	Spectrum Amount	Assignor/Licensee Name and Address	Call Signs and Geographies
0004544869	C	3	12 MHz times 3 licenses	Whidbey Telephone Co. ATTN Bruce Russell 14888 SR 525 Langley, WA 98260	WPYU553 (Spokane) WPYU554 (Idaho 1) WPYU555 (Washington 8 – Whitman)
0004544863	B	6	12 MHz times 6 licenses	Whidbey Telephone Co. ATTN Bruce Russell 14888 SR 525 Langley, WA 98260	WQIZ641 (Bremerton, WA) WQIZ642 (Richland-Kennewick-Pasco, WA) WQIZ643 (Olympia, WA) WQIZ644 (Idaho 2 – Idaho) WQIZ645 (Washington 3 - Ferry) WQIZ646 (Washington 4 – Grays Harbor)
0004566825	D (6) E (5)	11	6 MHz times 11 licenses	QUALCOMM Incorporated 5775 Morehouse Drive San Diego, CA 92121 ATTN Michael E Carosella	WPWU989 (Pacific) WPZA235 (Northeast) WPZA236 (Mid-Atlantic) WPZA237 (Southeast) WPZA238 (Great Lakes) WPZA239 (Central-Mountain) WQIZ616 (Boston-Worcester-Lawrence-Lowell- Brockton, MA-NH-RI-VT WQIZ617 (New York-North New Jersey-Long Island, NY- NJ-CT-PA-MA-VT) WQIZ618 (Philadelphia-Wilmington-Atlantic City, PA- NJ-DE-MD) WQIZ619 (Los Angeles-Riverside-Orange Cty, CA-AZ) WQIZ620 (San Francisco-Oakland-San Jose, CA)
0004621016	C	1	12 MHz times 1 license	700 MHz, LLC ATTN c/o Thomas Gutierrez Lukas, Nace, Gutierrez & Sachs, 8300 Greensboro Dr. # 1200 McLean, VA 22102	WPZA269 (Worcester-Fitchburg-Leominster, MA)

File Number	Blocks (Lower 700)	Number of Licenses	Spectrum Amount	Assignor/Licensee Name and Address	Call Signs and Geographies
0004635440	B	1	12 MHz times 1 license	Knology of Kansas, Inc. ATTN Bruce Schoonover 1241 O.G. Skinner Drive West Point, GA 31833	WQIZ634 (Lawrence, KS)
0004643747	C (17) B (5)	22	12 MHz times 22 licenses	Redwood Wireless Corp. 2602 S. Louise Avenue Sioux Falls, SD 57106 ATTN Joseph H. Beran	WPWV436 (Minneapolis-St. Paul, MN-WI) WPWV437 (Milwaukee, WI) WPWV438 (Madison, WI) WPWV439 (Racine, WI) WPWV440 (St. Cloud, MN) WPWV441 (Janesville-Beloit, WI) WPWV442 (Kenosha, WI) WPWV443 (Sheboygan, WI) WPWV444 (Rochester, MN) WPWV445 (La Crosse, WI) WPWV446 (Minnesota 7 – Chippewa) WPWV447 (Minnesota 8 - Lac qui Parle) WPWV448 (Minnesota 9 – Pipestone) WPWV449 (Minnesota 10 - Le Sueur) WPWV450 (Minnesota 11 – Goodhue) WPWV451 (Wisconsin 8 – Vernon) WPWV452 (Wisconsin 9 – Columbia) WQIZ622 (Minnesota 7 – Chippewa) WQIZ623 (Minnesota 8 – Lac qui Parle) WQIZ624 (Minnesota 9 – Pipestone) WQIZ625 (Minnesota 10 – Le Sueur) WQIZ626 (Minnesota 11 – Goodhue)
0004681773	B	1	12 MHz times 1 license	Windstream Lakedale, Inc. ATTN Eric N. Einhorn 1101 17th Street, NW, Suite 802 Washington, DC 20036	WQJW722 (St. Cloud, MN)
0004681771	B	3	12 MHz times 3 licenses	Windstream Iowa Communications, Inc. ATTN Eric N. Einhorn 1101 17th Street, NW, Suite 802 Washington, DC 20036	WQIZ570 (Iowa 6 – Iowa) WQIZ571 (Iowa 9 – Ida) WQIZ572 (Iowa 13 – Mitchell)

File Number	Blocks (Lower 700)	Number of Licenses	Spectrum Amount	Assignor/Licensee Name and Address	Call Signs and Geographies
0004699707	B	1	12 MHz times 1 license	Maxima International, LLC 5125 Yuma Street, NW Washington, DC 20016 ATTN William K. Dabaghi	WQIZ574 (Houma-Thibodaux, LA)
0004448347*	C	6	12 MHz times 6 licenses	D&E Investments, Inc. ATTN Eric N. Einhorn 1101 17th Street, NW, Suite 802 Washington, DC 20036	WPWV360 (Pennsylvania 12 – Lebanon) WPYZ994 (Lancaster, PA) WPYZ995 (Reading, PA) WPYZ996 (Altoona, PA) WPYZ997 (Williamsport, PA) WPYZ998 (State College, PA)

*Assignee is New Cingular Wireless PCS, LLC, an indirect, wholly-owned subsidiary of AT&T Inc.

CERTIFICATE OF SERVICE

I, Colleen von Hollen, of Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, MD 20814, hereby certify that a copy of the foregoing Joint Motion to Consolidate was served on this 9th day of June 2011 on those listed below as follows:

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